

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY
(Convicted Montana Prisoners Only)**

_____ **Division**
(You must fill in this blank. See Instruction 8.)

In the United States District Court for the District of Montana

Name of Petitioner (include name under which convicted):		Name of Respondent (authorized person having custody of petitioner):
vs.		
and the Attorney General of the State of Montana		
Prisoner No.:	Place of Confinement:	Case No. (to be filled in by Clerk):

Instructions – Read Carefully

1. Use this form if you intend to challenge a judgment of a Montana State court, a decision of the Parole Board, or a decision regarding good time. If you believe a different statutory section applies, you may make that point in a memorandum in support of your petition, but please use this form and answer its questions.
2. Your petition must be legibly handwritten or typed. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury. *Answer all the questions.* You are not necessarily required to answer “yes” to all questions in order to proceed.
3. Additional pages are not permitted except with respect to grounds for relief and the facts you rely on to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum in support of the petition. *Do not insert additional grounds for relief in the memorandum.*
4. A \$5.00 filing fee is required. If you cannot afford the filing fee, you may complete an Application to Proceed In Forma Pauperis. You may apply to proceed in forma pauperis at any stage of the case. You must pay the

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Clerk for copies of your petition or other court records, even if you are proceeding in forma pauperis.

5. Only judgments entered in one county may be challenged in this petition. If you seek to challenge judgments entered by different counties, you must file separate petitions as to each county.
6. The Court may determine your claims solely on the basis of what is in this petition. You must include in the petition all grounds for relief you want the Court to review and all facts supporting such grounds for relief. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date. Additionally, you must ordinarily first exhaust (use up) your available state court remedies as to each ground on which you request action by the federal court. The one-year federal statute of limitations, *see* 28 U.S.C. § 2244(d), is tolled while you are challenging the judgment(s) underlying this petition in *state* court.
7. It is helpful, though not required, to include with your original petition *one* copy of the Montana Supreme Court's opinion(s) in your case and any briefs you, your counsel, or the State filed in that court.
8. You are not required to serve this petition on the State. When you complete your petition, mail the *original and one copy* of the petition and, if applicable, your Application to Proceed In Forma Pauperis, to the Clerk of the United States District Court. If you challenge a decision of the Parole Board, file in the Helena Division. If you challenge a decision regarding good time, file in the Division where you are incarcerated. Otherwise, file in the Division where your conviction(s) arose:

Billings Division: Clerk of U.S. District Court, 316 N. 26th, Room 5405, Billings, MT 59101
(Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Park, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweetgrass, Treasure, Wheatland, Wibaux or Yellowstone County)

Butte Division: Clerk of U.S. District Court, 400 N. Main St., Federal Bldg. Rm. 303, Butte, MT 59701
(Beaverhead, Deer Lodge, Gallatin, Madison, or Silver Bow County)

Great Falls Division: Clerk of U.S. District Court, 215 1st Ave. North, P.O. Box 2186, Great Falls, MT 59403
(Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, or Valley County)

Helena Division: Clerk of U.S. District Court, Paul G. Hatfield Courthouse, 901 Front St., Ste 2100, Helena, MT 59626
(Broadwater, Jefferson, Lewis & Clark, Meagher, or Powell County)

Missoula Division: Clerk of the U.S. District Court, 201 E. Broadway, P.O. Box 8537, Missoula, MT 59807
(Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli, or Sanders County)

PETITION

1. Name and location of the court that entered the judgment under attack:
2. Date of judgment:
3. What were you convicted of? (all counts):

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4. What sentence was imposed?:

5. What was your plea?

- (a) Not guilty ☐
(b) Guilty ☐
(c) Nolo contendere or *Alford* ☐

If you pleaded guilty, nolo contendere, or entered an *Alford* plea on all counts, or if you entered such a plea on one or more counts and all other counts were dismissed, go to Number 8. If you entered a guilty plea to one charge, and maintained a not guilty plea on another charge, give details:

6. If you pleaded not guilty, what kind of trial did you have?

- Jury ☐
Judge only ☐

7. If you pleaded not guilty, did you testify at trial?

- Yes ☐
No ☐

8. Did you appeal your conviction or sentence to the Montana Supreme Court?

- Yes ☐ →Case Number and Date of Result: _____
No ☐ (please attach a copy of the decision)

9. Did you apply for relief to the Sentence Review Division?

- Yes ☐ →Case Number and Date of Result: _____
No ☐ (please attach a copy of the decision)

10. Did you file a petition for certiorari in the United States Supreme Court?

- Yes ☐ →Case Number and Date of Result: _____
No ☐ (please attach a copy of the decision)

11. Have you filed or had filed in state district court one or more petitions for postconviction relief?

- Yes ☐
No ☐

12. Did you appeal to the Montana Supreme Court from any adverse decision by the state district court on a petition for postconviction relief?

- Yes ☐ →Case Number(s) and Date of Result(s): _____
No ☐ (please attach a copy of the decision(s))

13. If you did not appeal to the Montana Supreme Court from the state district court's adverse action on any of your petitions for postconviction relief, explain briefly why you did not:

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14. Have you previously filed in the Montana Supreme Court one or more petitions for writ of habeas corpus?

Yes ☐ →Case Number(s) and Date of Result(s): _____
No ☐ (please attach a copy of the decision(s))

15. State *concisely* every ground on which you challenge the fact or duration of your confinement. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional facts and/or grounds for relief.

A. Ground One: _____

(1) Supporting FACTS (do not argue or cite law): _____

(2) Did you raise this issue in the Montana Supreme Court on direct appeal from your conviction in state court?

Yes ☐
No ☐

If Yes, what did the Montana Supreme Court decide (check one or both)?

Dismissed issue on procedural grounds ☐
Denied issue for lack of merit ☐

(3) Did you raise this issue in the Montana Supreme Court in an appeal from the state district court's denial of postconviction relief or in a petition for writ of habeas corpus in the Montana Supreme Court?

Yes ☐ →Case Number(s) and Date of Result(s): _____
No ☐ (please attach a copy of the decision(s))

If Yes, what did the Montana Supreme Court decide (check one or both)?

Dismissed issue on procedural grounds ☐
Denied issue for lack of merit ☐

(4) Did you ask the Montana Supreme Court to consider federal law in its decision?

Yes ☐
No ☐

(5) If your answer to any of (2), (3), or (4) is No, explain why you did not raise this issue in the Montana Supreme Court: _____

B. Ground Two: _____

(1) Supporting FACTS (do not argue or cite law): _____

(2) Did you raise this issue in the Montana Supreme Court on direct appeal from your conviction in state court?

Yes ☐

No ☐

If Yes, what did the Montana Supreme Court decide (check one or both)?

Dismissed issue on procedural grounds ☐

Denied issue for lack of merit ☐

(3) Did you raise this issue in the Montana Supreme Court in an appeal from the state district court's denial of postconviction relief or in a petition for writ of habeas corpus in the Montana Supreme Court?

Yes ☐ →Case Number(s) and Date of Result(s): _____

No ☐ (please attach a copy of the decision(s))

If Yes, what did the Montana Supreme Court decide (check one or both)?

Dismissed issue on procedural grounds ☐

Denied issue for lack of merit ☐

(4) Did you ask the Montana Supreme Court to consider federal law in its decision?

Yes ☐

No ☐

(5) If your answer to any of (2), (3), or (4) is No, explain why you did not raise this issue in the Montana Supreme Court: _____

C. Ground Three: _____

(1) Supporting FACTS (do not argue or cite law): _____

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(2) Did you raise this issue in the Montana Supreme Court on direct appeal from your conviction in state court?

Yes ☐

No ☐

If Yes, what did the Montana Supreme Court decide (check one or both)?

Dismissed issue on procedural grounds ☐

Denied issue for lack of merit ☐

(3) Did you raise this issue in the Montana Supreme Court in an appeal from the state district court's denial of postconviction relief or in a petition for writ of habeas corpus in the Montana Supreme Court?

Yes ☐ →Case Number(s) and Date of Result(s): _____

No ☐ (please attach a copy of the decision(s))

If Yes, what did the Montana Supreme Court decide (check one or both)?

Dismissed issue on procedural grounds ☐

Denied issue for lack of merit ☐

(4) Did you ask the Montana Supreme Court to consider federal law in its decision?

Yes ☐

No ☐

(5) If your answer to any of (2), (3), or (4) is No, explain why you did not raise this issue in the Montana Supreme Court: _____

D. Ground Four: _____

(1) Supporting FACTS (do not argue or cite law): _____

(2) Did you raise this issue in the Montana Supreme Court on direct appeal from your conviction in state court?

Yes ☐

No ☐

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If Yes, what did the Montana Supreme Court decide (check one or both)?

Dismissed issue on procedural grounds ☐

Denied issue for lack of merit ☐

- (3) Did you raise this issue in the Montana Supreme Court in an appeal from the state district court's denial of postconviction relief or in a petition for writ of habeas corpus in the Montana Supreme Court?

Yes ☐ →Case Number(s) and Date of Result(s): _____

No ☐ (please attach a copy of the decision(s))

If Yes, what did the Montana Supreme Court decide (check one or both)?

Dismissed issue on procedural grounds ☐

Denied issue for lack of merit ☐

- (4) Did you ask the Montana Supreme Court to consider federal law in its decision?

Yes ☐

No ☐

- (5) If your answer to any of (2), (3), or (4) is No, explain why you did not raise this issue in the Montana Supreme Court: _____

If you have additional grounds for relief, attach extra sheets. Set forth five subparagraphs for each additional ground for relief and answer each of questions (1) thru (5) for each additional ground for relief.

16. Do you have any action or appeal now pending in any court, state or federal, as to the judgment(s) or decision(s) you challenge in this Petition?

Yes ☐ →Case Number and Date of Filing: _____

No ☐ Name of Court: _____

If Yes, what issues do you raise in that case? _____

17. Give the name, and address if known, of each attorney who represented you in the following stages of any judgment(s) you challenge in this Petition:

(a) At change of plea hearing or at trial (whichever is applicable):

(b) At sentencing:

(d) On appeal:

(e) In any post-conviction proceeding in state district court:

Self-Represented ☐

(f) On appeal from any adverse ruling in a post-conviction proceeding:

Self-Represented ☐

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(g) In any state habeas proceeding:

Self-Represented ☐

18. Petitioner asks the Court to grant the following relief: _____

_____,
and/or any other relief to which Petitioner may be entitled.

Signature of Attorney (if any)

Petitioner's Declaration

- A. I understand that I must keep the Court informed of my current mailing address and that my failure to do so may result in dismissal of this Petition without actual notice to me.
- B. I understand that submission of a false statement or answer to any question in this Petition may subject me to penalties for perjury. I, the Petitioner in this action, declare under penalty of perjury that I have read the above Petition and that the information I have set forth in it is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.
- C. This Petition was deposited in the prison system for legal mail, postage prepaid or paid by the prison,
on _____, 20_____.

Signature of Petitioner

Date Signed

Rev'd Sept. 2004

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